IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

M.A.C.A.No.656 of 2006(B)

O.P.(M.V).826/2002 OF THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KASARAGOD.

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APPELLANT/2ND RESPONDENT:-

THE NEW INDIA ASSURANCE COMPANY LTD.,
REP. BY ITS ADMINISTRATIVE OFFICER,
REGIONAL OFFICE, M.G.ROAD, KOCHI-11.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS/PETITIONER & 1ST RESPONDENT:-

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1. M.KUNHAMBU NAMBIAR, AGED ABOUT 55 YEARS,
   S/O.K.NARAYANAN NAMBIAR, ADVOCATE,
   KODOTH HOUSE, ATHIYAMBOOR, KANHANGAD P.O.,
   BALLA VILLAGE, HOSDURG TALUK, KASARAGOD DIST.

2. V.V.SUNIL KUMAR @ SUNIL CHANDRAN,
   AGED ABOUT 31 YEARS, S/O.CHANDRAN,
   ATHIYAMBOOR, BALLA VILLAGE, HOSDURG TALUK,
   KANHANGAD P.O., KASARAGOD DIST.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

APPENDIX

APPELLANT'S EXHIBITS:-

EXT.R2(1) - TRUE COPY OF POLICY NO.3176080072724 FOR THE PERIOD FROM 10.01.2002 TO 09-01-2003 IN RESPECT OF CAR BEARING ENGINE NO.232926 AND CHASSIS NO.204861 PRODUCED BY THE APPELLANT, 2ND RESPONDENT IN THE COURT BELOW.

- TRUE COPY -

K.Padmanabhan Nair,J.

M.A.C.A.No.656 of 2006-B

Dated, this the 7th day of March, 2007

JUDGMENT

The 2nd respondent, Insurer in O.P.(M.V.).No.826 of 2002 on the file of Motor Accidents Claims Tribunal, Kasaragod is the appellant. The appeal is filed against an award passed by the Tribunal awarding an amount of Rs.10,200/- with interest at the rate of 9% per annum from the date of application till 31.12.2004 and thereafter at the rate of 6% per annum till realisation from the driver and the appellant.

2. The short facts necessary for the disposal of the appeal are as follows: The 1st respondent, a lawyer who is practising in Kasaragod, is the registered owner of a Maruti car bearing registration No.KL-13/C.5319. The vehicle was insured with the appellant. The vehicle met with an accident at about 9.45 P.M. on 11.4.2002 near Rotary Special School, Nellithatta. The 1st respondent filed the petition claiming compensation impleading his driver and the insurer as respondents. It was alleged that the accident occurred due to the negligence of the

driver. The 1st respondent produced copy of charge sheet and also wound certificate. Either side did not adduce any oral evidence. The appellant-Insurer raised a contention that petitioner was the owner and insured of the vehicle involved in the accident and the vehicle was covered insurance only against third parties and there was no additional premium paid covering the owner and as such he is not entitled to claim any compensation. The Tribunal found that the accident occurred solely due to the rash and negligent driving of the vehicle by the 2nd respondent herein and directed the appellant to pay the compensation. Challenging that order, this appeal is filed.

3. Learned counsel appearing for the appellant submits that the contention of the 1st respondent that the 2nd respondent is the owner and driver of the vehicle is false. It is submitted that actually the vehicle belongs to the 1st respondent himself and he had obtained a valid policy of Insurance also. The same is produced before this Court. The learned counsel appearing for the appellant relies on the decisions reported in **Dhanraj** v. **New India Assurance Co. Ltd.** [2004 (3) KLT 813 (SC)] and also **United India Insurance Co. Ltd.** v. **Rukiya**

[2006 (4) KLT 192] to argue that the owner, who is the insured, is not entitled to maintain action claiming compensation on account of the bodily injuries sustained by him in a road traffic accident against the Insurer. It is also contended that even accepting the case of the 1st respondent-applicant as such, he is not entitled to claim any compensation as his specific case is that he is a gratuitous passenger in a private car.

4. As already stated, though a contention was raised before the Tribunal, the appellant-Company did not produce the copy of the policy. But a copy of the policy was produced before this Court along with a memo (cf.No.2330/07) and today I have recorded that memo and received the copy of the policy, which was marked as Exhibit R2(1). The copy of the policy produced before this Court shows that the petitioner, who was the injured in the accident, was the owner of vehicle bearing registration No.KL-13/C 5319 involved in the accident. The policy was issued on 10.1.2002 and expired on 9.1.2003. It is true that the policy was a comprehensive one. But, the details of the policy show that it covers only own damage, public risk, Driver Coolies/Employees and third party property damage risk. There is no additional

premium paid for the owner. So, the 1st respondent being the insured, is not entitled to get compensation from the Insurer in this case. Even accepting the contention of the 1st respondent that he was a gratuitous passenger travelling in the car belonging to the 2nd respondent, he is not entitled to get any compensation from the Insurer as a gratuitous passenger in a private car is not entitled to get compensation from the Insurer. So, that part of the award by which the appellant was made liable is liable to be set aside. I make it clear that I am not disturbing the findings of the Court below that the accident occurred due to the rash or negligent driving of the vehicle by the 2nd respondent and as such he is liable for the same.

In the result, the appeal is allowed in part. That part of the award by which the appellant was made liable for the compensation is set aside. It is made clear that the award passed against the 2nd respondent-driver is not disturbed. I.A.No.759 of 2006 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-